

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

Baker Ranches, Inc., *et al.*,

Plaintiffs,

vs.

Deb Haaland, *et al.*,

Defendants.

Case No.: 3:21-cv-00150-GMN-CSD

**ORDER**

Pending before the Court is the Motion to Remand, (ECF No. 8), filed by Plaintiffs Baker Ranches, Inc., David John Eldridge, Ruth Eldridge, and Zane Jordan (collectively, “Plaintiffs”). Defendants Deb Haaland, as Secretary of the United States Department of the Interior, Shawn Benge, as Acting Director of the National Park Service, and James Woolsey, as Superintendent of the Great Basin National Park (collectively, “Defendants”) filed a Response, (ECF No. 25), and Plaintiffs filed a Reply, (ECF No. 31).

For the reasons discussed below, Plaintiffs’ Motion to Remand, is **GRANTED in part and DENIED in part.**

**I. BACKGROUND**

This case arises out of Defendants’ alleged diversion of the Baker and Lehman Creeks in violation of a water rights decree entered by the State of Nevada’s District Court for White Pine County. (*See generally* Compl., ECF No. 1-1). On October 1, 1934, the Nevada state court entered a Findings of Fact, Conclusions of Law, and Decree *In the Matter of the Determination of the Relative Rights in and to the Waters of Baker and Lehman Creeks and Tributaries in the County of White Pine, State of Nevada* (the “Baker-Lehman Decree”). (Compl. ¶ 1); (Baker-Lehman Decree, Ex. 2 to App. Mot. Remand, ECF No. 10). The Baker-Lehman Decree adjudicated the respective rights to the waters of Baker and Lehman Creeks and their

1 tributaries, “the whole of said stream system being within said White Pine County, State of  
2 Nevada.” (Compl. ¶ 13); (Baker-Lehman Decree 1:14–15, Ex. 2 to App. Mot. Remand).

3 The process of establishing the Baker-Lehman Decree began in 1925, when the State  
4 Engineer of Nevada elected to determine the relative water rights of the various claimants for  
5 Baker and Lehman Creeks. (Baker-Lehman Decree 4:24–5:7, Ex. 2 to App. Mot. Remand).  
6 The State Engineer published notices in the newspaper and sent mailings to all persons that  
7 may have had an interest in the proceedings, explaining that anyone with an interest in the  
8 water usage of the creeks was required to claim their rights with the State Engineer. (*Id.* 5:7–  
9 6:26). In 1931, all claimants entered into a stipulation settling their respective rights to the use  
10 of the water. (*Id.* 6:27–24). On April 7, 1933, the State Engineer filed an Order of  
11 Determination for the water rights with the state court, mailing a copy to all claimants, and  
12 giving a time to file objections. (*Id.* 7:25–8:15). On August 11, 1933, the state court held a  
13 hearing on the Order of Determination, and subsequently entered the Baker-Lehman Decree on  
14 October 1, 1934. (*Id.* 9:7–11, 39:15). At the conclusion of the proceedings, the state court  
15 found that “all and singular orders and notices required by [the] Water Code of this State were  
16 duly made and given as required by law and all and singular the proceedings required by law to  
17 be had were duly had as required by said Water Code.” (Baker-Lehman Decree 9:13–17, Ex. 2  
18 to App. Mot. Remand).

19 The Baker-Lehman Decree provides:

20 That the Judgment and Decree to be hereinafter entered should provide that each  
21 and every water user of the Baker and Lehman Creeks stream system and its  
22 tributaries, and each of agents, attorneys, servants, employees, and their  
23 respective successors in interest, and each and every person acting in aid or  
assistance of said parties, or either or any of them, be perpetually enjoined and  
restrained as follows, to-wit:

24 (a) From at any time diverting or using or preventing or obstructing the  
25 flow, in whole or in part, in or along its natural channel, of any of the  
water or said stream system, except to the extent and in the amount and in  
the manner and at the time or times fixed by this Decree and allocated,

1 allowed, prescribed, and determined to such parties respectively, and as  
2 may be allowed in the permits which have been or may hereafter be  
granted by the State Engineer of the state of Nevada.

3 (b) From diverting from the natural channel and from using any of the said  
4 water for irrigation or any other purpose in excess of the amount  
5 specifically allotted to or for said party herein and fixed by this Decree, or  
6 in excess of the specified allotment under such permit or permits so  
heretofore granted or which may hereafter be granted by said State  
Engineer.

7 (c) From diverting from the natural channel and from using any of the said  
8 waters in any other manner or for any other purpose or purposes or upon  
9 any other land or lands or in any other amount than as provided and  
10 prescribed by the terms of this Decree or by any such permit so granted by  
said State Engineer.

11 (d) From diverting from the natural channel and from using any of the said  
12 water at any other time or times than as specified and provided by the  
13 terms of this Decree or by any such permit so granted by the said State  
Engineer.

14 (e) From in any manner meddling with, opening, closing, changing,  
15 injuring, or interfering with any headgates, weirs, water-boxes, flumes, or  
16 measuring devices, or either or any of them, placed, installed, established,  
or approved by said State Engineer or by his authority or direction, unless  
17 such act be done with the permission or authority of the water  
18 commissioner or commissioners on said stream system during the period  
of his regulation or control of said water, or, if not done during such period  
19 of his control, then by virtue of the allowances, authority, terms, and  
provisions of this Decree or by a permit so granted by said State Engineer.

20 (Compl. ¶ 20); (Baker-Lehman Decree 26:6–27:18, Ex. 2 to App. Mot. Remand).

21 Plaintiffs hold water rights under the Baker-Lehman Decree. (Compl. ¶ 14). Plaintiffs  
22 also explain that the National Park Service is the successor-in-interest to water rights  
23 adjudicated under the Baker-Lehman Decree because the Baker and Lehman Creeks flow  
24 through Great Basin National Park (the “Park”). (*Id.* ¶¶ 15, 21). Defendants confirm that the  
25 United States holds two water rights covered under the Baker-Lehman Decree that the United

1 States acquired after the Decree was initially issued. (Resp. 5:26–28, ECF No. 25). Plaintiffs  
2 allege that the availability of water flows to satisfy their decreed water rights depends on the  
3 unobstructed, undiverted, and unconsumed flow of water through the Park. (Compl. ¶ 27).  
4 However, Plaintiffs claim that Defendants are diverting water from the creeks for use at Park  
5 campgrounds without a water right to do so, in violation of the Baker-Lehman Decree. (*Id.* ¶  
6 27). Plaintiffs also claim that Defendants’ land management practices allow debris to  
7 accumulate in the creeks, which further blocks and diverts the water, depriving Plaintiffs of  
8 their decreed rights. (*Id.* ¶¶ 31, 37–41). Finally, Plaintiffs assert that Defendants neither allow  
9 Plaintiffs to enter the Park to remove obstructions from the creeks, nor remove obstructions  
10 themselves. (*Id.* ¶ 33–34).

11 In their prayer for relief, Plaintiffs ask the Court to enjoin Defendants from: (1) diverting  
12 and using tributary water from Baker and Lehman Creeks at campgrounds; (2) interfering with  
13 Plaintiffs’ efforts to remove obstructions from the creeks (or alternatively, the Court should  
14 order Defendants to remove obstructions); (3) threatening Plaintiffs with law enforcement  
15 action when Plaintiffs attempt to protect their decreed rights; (4) diverting water in any manner  
16 other than as allowed under the Baker-Lehman Decree; (5) planting vegetation in the riparian  
17 corridors of the creeks or otherwise consuming tributary water; and (6) felling trees or other  
18 vegetation in the creek channels. (*Id.* 8:22–9:22).

19 Plaintiffs originally filed this case in the Nevada Seventh Judicial District Court, White  
20 Pine County, alleging one cause of action: Enforcement of Decree. (*Id.* ¶¶ 42–50, ECF No. 1-  
21 1). Defendants removed to the United States District Court for the District of Nevada pursuant  
22 to 28 U.S.C. § 1442(a)(1), alleging a federal defense of sovereign immunity. (Pet. Removal  
23 2:8–11, ECF No. 1). Plaintiffs now petition the Court to remand this case for lack of subject  
24 matter jurisdiction because the state court has primary exclusive jurisdiction over its own water  
25 rights decree. (Mot. Remand, 21:1–4, ECF No. 8).

## II. LEGAL STANDARD

Federal courts are courts of limited jurisdiction, possessing only those powers granted by the Constitution and by statute. *See United States v. Marks*, 530 F.3d 799, 810 (9th Cir. 2008). “If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded.” 28 U.S.C. § 1447(c). Generally, district courts have subject matter jurisdiction over civil actions in which: (1) the claims arise under federal law; or (2) where no plaintiff is a citizen of the same state as a defendant and the amount in controversy exceeds \$75,000.00. *See* 28 U.S.C. §§ 1331, 1332(a).

A civil action brought in state court may be removed to a federal district court if the district court has original jurisdiction over the matter. 28 U.S.C. § 1441(a). The defendant asserting the removal must prove it is proper, and there is a strong presumption against removal jurisdiction. *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). “Federal jurisdiction must be rejected if there is any doubt as to the right of removal in the first instance.” *Id.* (quoting *Libhart v. Santa Monica Dairy Co.*, 592 F.2d 1062, 1064 (9th Cir. 1979)).

## III. DISCUSSION

Plaintiffs argue that this case should be remanded because, pursuant to Ninth Circuit precedent in *State Engineers v. South Fork Band of the Te-Moak Tribe of West Shoshone Indians of Nevada*, 339 F.3d 804 (9th Cir. 2003), the Nevada state court has prior exclusive jurisdiction over the administration of the Baker-Lehman Decree, and thus, Defendants improperly removed. (Mot. Remand 15:22–17:10, ECF No. 8). Defendants counter that they properly removed this case pursuant to 28 U.S.C. § 1442(a)(1), and that the Court should retain this case because it has independent subject matter jurisdiction based on Defendants’ sovereign immunity defense. (Resp. 6:1–9:8, ECF No. 25). The Court must determine which of two seemingly competing theories of jurisdiction, prior exclusive jurisdiction or federal officer removal under 28 U.S.C. § 1442(a)(1), prevails in this case.

1 The prior exclusive jurisdiction doctrine derives from the principle “that when a court of  
 2 competent jurisdiction has obtained possession, custody, or control of a particular property, that  
 3 possession may not be disturbed by any other court.” *Te-Moak Tribe*, 339 F.3d at 809 (quoting  
 4 14 Charles Alan Wright *et al.*, *Federal Practice and Procedure* § 3631, at 8 (3d ed. 1998)).  
 5 Prior exclusive jurisdiction prevails when “the court hearing the second suit [cannot] adjudicate  
 6 personal claims to property without disturbing the first court’s jurisdiction over the res.” *Id.* at  
 7 811. In the Ninth Circuit, prior exclusive jurisdiction is consistently applied in the water rights  
 8 context as a mandatory jurisdictional limitation. *Compare Te-Moak Tribe*, 339 F.3d at 814 (a  
 9 state court that entered a water rights decree has prior exclusive jurisdiction over any  
 10 proceedings concerning the administration of the decree), *with United States v. Alpine Land &*  
 11 *Reservoir Co.*, 174 F.3d 1007 (9th Cir. 2007) (a federal court that entered a water rights decree  
 12 has prior exclusive jurisdiction over any proceedings concerning the administration of the  
 13 decree).

14 In contrast, the federal officer removal statute provides:

15 A civil action or criminal prosecution that is commenced in a State court and that  
 16 is against or directed to any of the following may be removed by them to the  
 17 district court of the United States for the district and division embracing the place  
 wherein it is pending:

- 18 (1) The United States or any agency thereof or any officer (or any person  
 19 acting under that officer) of the United States or of any agency thereof,  
 20 in an official or individual capacity, for or relating to any act under  
 21 color of such office or on account of any right, title or authority  
 claimed under any Act of Congress for the apprehension or punishment  
 of criminals or the collection of the revenue.

22 28 U.S.C. § 1442(a)(1). “Under the federal officer removal statute, suits against federal  
 23 officers may be removed despite the nonfederal cast of the complaint; the federal  
 24 question element is met if the defense depends on federal law.” *Jefferson County v.*  
 25 *Acker*, 527 U.S. 423, 431 (1999). “To invoke § 1442(a)(1) removal, a defendant in a

1 state court action ‘must demonstrate that (a) it is a person within the meaning of the  
2 statute; (b) there is a causal nexus between its actions, taken pursuant to a federal  
3 officer’s directions, and plaintiff’s claims; and (c) it can assert a colorable federal  
4 defense.’” *Fidelitad, Inc. v. Insitu, Inc.*, 904 F.3d 1095, 1099 (9th Cir. 2018) (citing  
5 *Durham v. Lockheed Martin Corp.*, 445 F.3d 1247, 1252 (9th Cir. 2006)).

6 In *Te-Moak Tribe*, the Ninth Circuit considered prior exclusive jurisdiction in the  
7 context of removal under 28 U.S.C. § 1442(a)(1). *Te-Moak Tribe* concerns the administration  
8 of water rights under the ninety-year-old Humboldt Decree entered by Nevada’s Sixth Judicial  
9 District Court. *Te-Moak Tribe*, 339 F.3d at 807. After the state court entered the Humboldt  
10 Decree, the United States purchased five ranches subject to the decree to create a reservation  
11 for the South Fork Band of the Te-Moak Tribe of Western Shoshone Indians. *Id.* Over the  
12 years, the Te-Moak Tribe eventually began prohibiting the state’s water commissioner from  
13 entering the reservation to assess whether all beneficiaries of the Humboldt Decree were  
14 receiving their decreed share of water. *Id.* at 808. As a result, the State Engineer of Nevada  
15 initiated contempt proceedings under the Humboldt Decree in state court against the Te-Moak  
16 Tribe, with the United States, as the deeded landowner of the reservation, joined as a necessary  
17 party. *Id.* The United States removed the case to federal court under 28 U.S.C. § 1442(a)(1).  
18 *Id.* The Ninth Circuit found that while § 1442(a)(1) allows the federal government to remove a  
19 case to federal court, “it does not determine whether a court has jurisdiction to hear it.” *Id.* at  
20 809. Further, the Ninth Circuit held that a state court that has adjudicated a water decree retains  
21 exclusive jurisdiction over its administration, and thus, the federal court lacked subject matter  
22 jurisdiction over the case. *Id.* at 811, 814.

23 The present case is directly analogous to *Te-Moak Tribe* because both cases  
24 involve: (1) a prior adjudication by the Nevada state court of the water rights in a stream  
25 system; (2) the subsequent acquisition by the United States of land subject to the state



1 court's water rights decree; (3) a lawsuit initiated in state court to enforce the decree  
2 based on the United States' alleged failure to comply with the decree's terms; and (4)  
3 removal by the United States to federal court under § 1442(a)(1). Since Plaintiffs'  
4 complaint concerns the administration of a water rights decree issued by a state court,  
5 *Te-Moak Tribe* governs, and the state court has prior exclusive jurisdiction over this  
6 case. *Te-Moak Tribe*, 339 F.3d at 811. Put differently, even though Defendants properly  
7 removed this case under § 1442(a)(1), the state court's prior exclusive jurisdiction over  
8 the Baker-Lehman Decree acts as a "specific jurisdictional bar" to this Court's subject  
9 matter jurisdiction. *Id.* at 809. Further, this Court could not grant Plaintiffs' request for  
10 injunctive relief without "disturbing the first court's jurisdiction over the res." *Id.* at 811.  
11 Accordingly, remand for lack of subject matter jurisdiction is required. *Id.* at 810, 814  
12 (the doctrine of prior exclusive jurisdiction "is a mandatory jurisdictional limitation").

13 Defendants attempt to distinguish the present case from *Te-Moak Tribe* by  
14 pointing out that "the removal in *Te-Moak Tribe* was not based on an assertion of  
15 sovereign immunity, or on any federal defense." (Resp. 10:12–13, ECF No. 25). As  
16 such, Defendants argue that the legal issue presented in *Te-Moak Tribe* does not apply  
17 here. (*Id.* 10:10–19). However, the Ninth Circuit explicitly states that the legal issue in  
18 *Te-Moak Tribe* was "whether a state court that has adjudicated a water decree retains  
19 exclusive jurisdiction over its administration," which is the exact issue at stake here. 339  
20 F.3d at 807. Further, regardless of the presence of a federal defense, the removal statute  
21 at issue both here and in *Te-Moak Tribe* is § 1442(a)(1). In *Te-Moak Tribe*, the Ninth  
22 Circuit was very clear that, while § 1442(a)(1) creates grounds for proper removal, it  
23 does not independently confer subject matter jurisdiction on a federal court, particularly  
24 when that federal court is competing with a state court's prior exclusive jurisdiction. *Id.*



1 at 809.<sup>1</sup> Neither *Te-Moak Tribe*, nor any subsequent case law provided by Defendants,  
 2 carves out an exception to the dominance of prior exclusive jurisdiction for removal  
 3 under § 1442(a)(1) based on a colorable federal defense, and thus, the Court finds no  
 4 reason to create one here.

5 Defendants also provide several alternative arguments, essentially claiming that  
 6 the Baker-Lehman Decree does not apply to the United States. For example, Defendants  
 7 argue that: (1) this case is not a proper administration action because it was not initiated  
 8 by the State Engineer;<sup>2</sup> and (2) the United States is neither a party to, nor bound by, the  
 9 Baker-Lehman Decree because the United States was not included in the Decree's  
 10 adjudication. (*See* Resp. 10:20–13:11). However, any questions related to the  
 11 administration, validity, or scope of the Baker-Lehman Decree are more appropriately  
 12 decided by the state court, as the court with prior exclusive jurisdiction. *Cf. United States*  
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14 <sup>1</sup> Plaintiffs also ask the Court to award attorney fees and costs. However, because defendants had “an  
 15 objectively reasonable basis for removal” under 28 U.S.C. § 1442(a)(1) (the federal officer removal statute), the  
 16 Court declines to award Plaintiffs’ attorney fees and costs. *See Martin v. Franklin Capital Corp.*, 546 U.S. 132,  
 136 (2005) (“absent unusual circumstances, attorney’s fees should not be awarded when the removing party has  
 an objectively reasonable basis for removal”).

17 <sup>2</sup> The question of whether this case is actually a suit for the administration of the Baker-Lehman Decree  
 18 could be an appropriate inquiry for this Court, since the state court has prior exclusive jurisdiction only  
 19 over the *administration* of the decree. However, in this case, Defendants provide no authority to support  
 20 the proposition that only the State Engineer may initiate administration actions. (*See* Resp. 10:20–12:10,  
 ECF No. 25). To the contrary, case law indicates that “the statutory provisions of the Nevada water law  
 21 empowering the State Engineer to take certain administrative steps following the entry of the decree are  
 not exclusive.” *See United States v. Hennen*, 300 F. Supp. 256, 263–64 (D. Nev. 1968). Further,  
 22 Defendants do not explain how a Complaint requesting that the Court enjoin Defendants from “diverting  
 water in any manner other than as allowed under the Baker-Lehman Decree” is not related to the  
 23 administration of the Baker-Lehman Decree, which explicitly states that “each and every water user of  
 the Baker and Lehman Creeks . . . and . . . their respective successors in interest . . . be perpetually  
 24 enjoined . . . [f]rom at any time diverting or using or preventing or obstructing the flow, in whole or in  
 part, in or along its natural channel, of any of the water or said stream system.” (Compl. 9:17–18, ECF  
 25 No. 1-1); (Baker-Lehman Decree 26:6–27:18, Ex. 2 to App. Mot. Remand, ECF No. 10). *See also*  
*Hennen*, 300 F. Supp. at 263 (“To administer a decree is to execute it, to enforce its provisions, to  
 resolve conflicts as to its meaning, to construe and to interpret its language.”). Accordingly, for the  
 purposes of remand Defendants have not met their burden to demonstrate that administration is at issue,  
 and thus, any remaining challenges as to administration should be left for the state court to interpret.

1 *v. Hennen*, 300 F. Supp. 256, 263 (D. Nev. 1968) (“To administer a decree is to execute  
2 it, to enforce its provisions, to resolve conflicts as to its meaning, to construe and to  
3 interpret its language.”). Accordingly, the Court grants Plaintiffs’ Motion to Remand.

4 **IV. CONCLUSION**

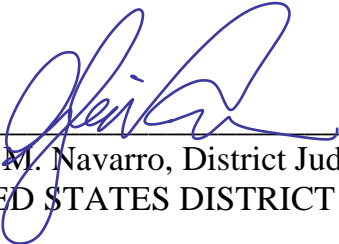
5 **IT IS HEREBY ORDERED** that Plaintiffs’ Motion to Remand, (ECF No. 8), is  
6 **GRANTED in part and DENIED in part.**<sup>3</sup>

7 **IT IS FURTHER ORDERED** that Plaintiffs’ Motion for Leave to File Excess Pages,  
8 (ECF No. 30), is **GRANTED**.

9 **IT IS FURTHER ORDERED** that Plaintiffs’ Motion for Order to Show Cause, (ECF  
10 No. 9), and Defendants’ Motion to Dismiss, (ECF No. 34), are **DENIED as moot**.

11 The Clerk of Court shall close this case.

12 **DATED** this 22 day of March, 2022.

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16 Gloria M. Navarro, District Judge  
17 UNITED STATES DISTRICT COURT  
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<sup>3</sup> Plaintiff’s Motion to Remand is denied to the extent that it requests an award of attorney’s fees and costs.